IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 1219 of 1997
with
Misc. Criminal Application No.7204 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI
and
Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT
Versus
SWATANTRASING ALIAS SURESH UMRAV THAKUR

Appearance:
Ms Hansa Punani APP for appellant
MS BANNA S DUTTA for Respondent No. 1

CORAM : MR.JUSTICE M.H.KADRI
and
MR.JUSTICE R.P.DHOLAKIA

Date of decision: 25/01/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE M.H.KADRI)

1. State of Gujarat, by filing this appeal under Section 378 of the Code of Criminal Procedure, has questioned the legality of the judgment and order dated July 29, 1997, passed by the learned Additional Sessions Judge, Ahmedabad City, in Sessions Case No.89 of 1997, by which, the respondent came to be acquitted for the offences punishable under Section 397 read with Sections

34 and 188 of the Indian Penal Code and under Section 135(1) of the Bombay Police Act.

2. Complainant, Sohansing Satyanarainsing, was serving in Shyam Dairy situated in Shahpur locality in Ahmedabad city. On March 10, 1997, at about 4 p.m. his employer Harishkumarsing had handed over him cash of Rs.5000/- in the denomination of currency notes of Rs.50/-, and asked him to bring milk from Shakti Dairy situated at Noblenagar. As per the say of the complainant, when he reached near Noblenagar, the respondent, who was known to him, stopped his auto-rickshaw and, when the auto-rickshaw was stopped, the respondent occupied the seat near him. Another person who was of a short stature occupied the rear seat. The respondent was carrying a knife and, by showing the knife, he told the complainant to hand him over the currency notes. As the complainant was threatened, because of the knife which was put at his chest by the respondent, the complainant handed over the currency notes of Rs.5000/- to the respondent. As soon as the said amount was handed over to the respondent, the respondent and the another person ran away. As per the say of the complainant, after the incident, he had returned to Shyam Dairy situated at Shahpur and narrated the incident to his employer, Harishkumarsing. The employer directed the complainant to lodge a complaint in the concerned police station. Accordingly, the complainant lodged complaint with Sardar Nagar Police Station. After lodging of the complaint, the complainant, in the company of police personnel, went to Maya Talkies situated at Kubernagar where the respondent had gone to see a movie. The complainant identified the respondent and the police arrested the respondent from Maya Talkies at around 8 p.m. The respondent was carrying an amount of Rs.2000 and the knife. The knife and currency notes of Rs.2000 were seized under a panchanama. PSI, Natvarsinh J. Bhatia, carried out further investigation and recorded statements of the witnesses. The search was carried out to find out the other person who had accompanied the respondent in carrying out the robbery. After completing the investigation, PSI, Bhatia, filed a chargesheet against the respondent and one unknown person for the offences punishable under Sections 397, 188 read with 34 of the Indian Penal Code and Section 135(1) of the Bombay Police Act. As the offence under Section 397 of the Indian Penal Code is exclusively triable by Court of Sessions, the case was committed to the Court of Sessions, where it came to be numbered as Sessions Case No.89 of 1997.

3. Charge Exh.1 was framed against the respondent for the abovestated offence by the learned Additional City Sessions Judge, Court No.15, Ahmedabad. The charge was read over and explained to the respondent wherein he pleaded not guilty and claimed to be tried. The prosecution, to prove the charge against the respondent, examined (1) P.W.1, Sohansing Satyanarayansing Rajput (complainant), Exh.7, (2) P.W.2, Bhagvandas Punabhai Patel, Exh.8, (3) P.W.3, Vasudev Govindram, Exh.9 and (4) P.W.4, PSI, Natwarsinh Javansinh Bhatia, Investigating Officer, Exh.12. The prosecution produced documentary evidence such as complaint Exh.13, panchanama of arrest of the respondent, panchanama of search and seizure, etc. to prove the case against the respondent.

4. The learned City Additional Sessions Judge, Court No.17, Ahmedabad City, on appreciation of oral as well as documentary evidence and arguments advanced by the learned advocates for the appellant and the respondents, came to the conclusion that the evidence of the complainant was self-contradictory and the search and seizure of the respondent was also not proved beyond reasonable doubt. The learned Judge was of the opinion that the incident in question had taken place around 17.30 hrs. on March 10, 1997 and, according to the complainant, he had gone back to Shyam Dairy, at Shahpur, and narrated the incident to his employer, Harishkumarsing. The learned Judge observed that, as per the say of the complainant, he had lodged the complaint at 6 p.m. at Sardarnagar Police Station, which was not possible as Sardarnagar Police Station was situated at a long distance from Shahpur and it would not been possible for the complainant to first go to Shahpur and then to Sardarnagar Police Station within the said time-frame. The learned Judge has further observed that the arrest panchanama and the search and seizure panchanama were also doubtful because of inconsistency in the evidence of the complainant and the panch witness. P.W.3, Vasudev Govindram. In view of the contradictory evidence of the prosecution witnesses, the learned Judge acquitted the respondent of the charges framed against him, which has given rise to filing of this appeal by the State of Gujarat.

5. It may be mentioned that, at the time of admission of the appeal, the Division Bench (Coram: R.K. Abichandani & A.L. Dave, JJ.) by order dated June 20, 1998, had issued bailable warrant against the respondent in the sum of Rs.5000/-. The bailable warrant was served on the respondent on October 28, 1999 but as the respondent could not furnish the bail bond in the sum of

Rs.5000/-, he was lodged in the Central Prison, Ahmedabad, since October 28, 1999. The respondent had filed Misc. Criminal Application No.7204 of 2000 praying, inter alia, to release him on bail on personal bond as he was a native of Uttar Pradesh State and was not in a position to furnish surety in the sum of Rs.5000/-. As the respondent was in custody since October 28, 1997, we directed the Office to prepare paper book and place the appeal for final hearing.

6. Learned Additional Public Prosecutor, Ms. Hansa Punani, and learned advocate Ms. Banna Datha, who was appointed as Advocate to represent the respondent, have taken us through the entire record and proceedings.

7. Learned APP, Ms. Hansa Punani, has submitted that the respondent was known to the complainant and there was no question of mistaken identity and the complainant, in his complaint, had named the respondent as person who had committed robbery of Rs.5000/- by showing a knife to him. It is submitted by the learned APP that the evidence of the panch witness as well as the complainant established that the respondent was caught with cash of Rs.2000/- and knife from Maya Talkies and, therefore, there was sufficient evidence to involve the respondent of the charges framed against him and, therefore, the appeal be allowed and the judgment and order of the learned judge be reversed and the respondent be convicted of the offence for which he was charged.

8. The submission of the learned APP does not deserve any consideration and requires to be rejected. The evidence of the complainant was inconsistent because as per his say, the incident had taken place around 17.30 hrs. on March 10, 1997 and, after the incident, he had returned to Shyam Dairy, at Shahpur, and narrated the incident to his employer, Harishkumar, and his employer directed him to lodge the complaint in Sardarnagar Police Station. As per the say of the complainant, thereafter, he had gone from Shahpur to Sardarnagar Police Station and lodged the complaint before PSI, Natvarsinh. J. Bhatia, at Sardarnagar Police Station. The complainant, in cross examination, had deposed that he had reached Sardarnagar Police Station at around 6 p.m. and had dictated the complaint before the writer-constable. It may be mentioned that the incident had taken place at 5.30 p.m. and the complainant had gone from Noblenagar to Shyam Dairy at Shahpur and, from Shyam Dairy, as per the direction of his employer, he had gone to lodge a complaint at Sardarnagar Police Station. The distance between "Noblenagar-Shahpur" and "Shahpur-Sardarnagar" is

such a long that he could not have reached Sardarnagar Police Station at 6 p.m. Therefore, in our opinion, the evidence of the complainant with regard to timing that the incident had taken place at 5.30 p.m. and the complaint was lodged at 6 p.m. is self-contradictory and his evidence does not inspire confidence. One thing is also required to be mentioned that, as per the say of the complainant, after lodging of the complaint, he had returned to Shyam Dairy at Shahpur and had remained at the Dairy for the whole night. According to the evidence of P.W.2, Vasudev Govindram, Exh.9, who was a panch witness about the arrest and the search and seizure of the respondent, he was called to remain present and the panchanama was drawn at 10.15 p.m. and the respondent was arrested at that time near Maya Talkies where the complainant had identified the respondent as the person who had committed robbery of Rs.5000/- by showing a knife. The evidence of the panch witness is also contradictory if it is compared with the evidence of the complainant who had deposed that after lodging of the complaint and after returning from Sardarnagar Police Station to Shyam Dairy, at Shahpur, he had remained at the Dairy in the whole night. If the complainant had remained at the Dairy for the whole night, then how the respondent was identified by him in presence of P.W.3, Vasudev Govindram, at Maya Talkies, around 10.15 p.m. In view of this contradictory evidence with regard to timing, and inconsistency in the evidence of the complainant and the panch witness, in our opinion, the learned Additional Sessions Judge had committed no error in holding that the prosecution had miserably failed to prove the charges framed against the respondent. It may also be mentioned that from the cross examination of P.W.3, Vasudev Govindram, who had remained as panch, it becomes evident that he used to remain as panch in the cases lodged by Sardarnagar Police Station. Therefore, in our opinion, the said panch witness is not an independent witness and no reliance can be placed on his evidence to hold that currency notes of Rs.2000/- and the knife were found from the respondent near Maya Talkies. The learned Additional Sessions Judge has given cogent and convincing reason in acquitting the respondent of the charges framed against him. As we are in the entire agreement with the conclusion and the finding of the learned Additional Sessions Judge, we do not propose to discuss the whole evidence again. The learned APP has not been able to pinpoint any infirmity or illegality or perversity in the finding and conclusion arrived at by the learned Additional Sessions Judge. The order of acquittal is recorded by the learned Additional Sessions Judge after proper appreciation of evidence and,

therefore, we do not find any reason to interfere with the said findings recorded by the learned Additional Sessions Judge.

9. This is an acquittal appeal in which the court would be slow to interfere with the order of acquittal. Infirmities in the prosecution case go to the root of the matter and strike a vital blow on the prosecution case. In such a case, it would not be safe to interfere with the order of acquittal more particularly when the evidence has not inspired confidence of the learned Additional Sessions Judge who had an advantage of observing demeanour of witness. On overall appreciation of evidence, we are satisfied that there is no infirmity in the reasons assigned by the learned Additional Sessions Judge for acquitting the respondent. Suffice it to say that the learned Additional Sessions Judge has given cogent and convincing reasons for acquitting the respondents and the learned Additional Public Prosecutor has failed to dislodge the reasons given by the learned Additional Sessions Judge in order to convince us to take the view contrary to the one already taken by the learned Additional Sessions Judge. Therefore, the acquittal appeal deserves to be rejected.

10. For the foregoing reasons, the appeal filed by the State of Gujarat is dismissed. The respondent, SWATANTRASING ALIAS SURESH UMRAV THAKUR, who could not furnish the bail bond pursuant to the bailable warrant issued by this Court against him at the admission stage, is in custody since October 28, 1999. Hence, the respondent is ordered to be set at liberty forthwith if his presence is not required in any other case.

11. The Office is directed to send intimation to the Jail Authority immediately by telephone.

12. As the respondent is acquitted, Misc. Criminal Application No.7204 of 2000 for releasing the respondent on bail does not survive and stands disposed of accordingly.

January 25, 2001 (M.H. Kadri, J.)

(R.P. Dholakia, J.)

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